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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 REFUGIO ESCALANTE,
12 Petitioner,
13 v.
14 JOE LIZARRAGA, Warden,
15 Respondent.
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Case No. 5:17-cv-00850-R (SHK)

**ORDER ACCEPTING FINDINGS
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE AND DISMISSING
ACTION WITH PREJUDICE**

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18 Pursuant to Title 28 of the United States Code, section 636, the Court has
19 reviewed the Petition for a Writ of Habeas Corpus, the records on file, and the
20 Report and Recommendation (“R&R”) of the United States Magistrate Judge.
21 The Court has engaged in de novo review of those portions of the R&R to which
22 Petitioner has objected. The Court accepts the findings and recommendation of
23 the Magistrate Judge.

24 In his Objections, Petitioner re-asserts that he is entitled to habeas relief on
25 his ineffective assistance of counsel claim directed to counsel’s failure to
26 adequately research all law that would support the presentation of witness
27 testimony by witnesses living in Mexico. Electronic Case Filing Number (“ECF
28 No.”) 20, Objections at 1-3. In support of this argument, he cites to United States

1 v. Buck, 271 F. Supp. 3d 619 (S.D.N.Y. 2017), for the proposition that, upon a
2 finding of exceptional circumstances, a trial court may allow a witness to testify via
3 two-way closed-circuit television. ECF No. 20, Objections at 2. Buck is
4 unavailing. First, the case had not been decided by the time of Petitioner's 2014
5 trial, and thus, Petitioner's counsel could not have been remiss in failing to cite it to
6 the trial court. Moreover, it is a federal district court case that relies on federal
7 procedural law in support of its holding. Thus, even if this case had been decided
8 by the time of Petitioner's trial, it would not have provided any authority under
9 state law for Petitioner's trial counsel to argue that his witnesses in Mexico should
10 be allowed to testify in this manner in his state court trial.

11 Finally, Petitioner again asserts that he was prejudiced by the actions of his
12 attorney at trial because he was unable to present the witnesses from Mexico. Id.
13 He asserts that these witnesses would have been able to testify to "threats and
14 accusations made against the father of the alleged victim by the mother of the
15 alleged victim;" their observations of daily life; statements made against Petitioner
16 by the victim's mother; and his travel between Mexico and the United States after
17 the victim's disclosure. Id. at 3. He further claims that this would have allowed for
18 evidence from competent adults and not just Petitioner's niece, who was a child at
19 the time in question. Id. None of this purported testimony is relevant to the
20 question of whether Petitioner sexually abused the victim while they lived together
21 in the United States. The Court agrees with the Magistrate Judge's conclusion
22 that Petitioner has failed to show prejudice arising from his inability to call these
23 witnesses from Mexico given the evidence against him, described in detail in the
24 Report and Recommendation. ECF No. 16, R&R at 19, 19 n.10, 22.

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1 IT IS THEREFORE ORDERED that Judgment be entered (1) **DENYING**
2 the Petition for a Writ of Habeas Corpus; and (2) **DISMISSING** this action with
3 prejudice.

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5 Dated: June 5, 2018



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7 HON. MANUEL L. REAL
8 United States District Judge
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